

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BERNARD J. MATTER,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
CORRECTIONS, PAT GLEBE, SARA
SMITH, NORM GOODENOUGH,
CLIFFORD JOHNSON, ELIZABETH
SUITER, LARA STRICK, BARBARA
CURTIS, J. DAVID KENNEY,

Defendants.

No. C13-5213 RBL/KLS

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

Before the Court is Plaintiff's motion for the appointment of counsel. ECF No. 10. Having carefully reviewed Plaintiff's motion and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's motion should be denied.

DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("[a]ppointment of counsel under this section is discretionary, not mandatory.") However, in "exceptional circumstances," a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional circumstances exist, the court must evaluate both "the likelihood of success on the merits [and]

1 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
2 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
3 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
4 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
5 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
6 1101, 1103 (9th Cir. 2004).

7
8 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
9 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
10 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
11 facts during litigation. But, if all that was required to establish the complexity of the relevant
12 issues was a demonstration of the need for development of further facts, then practically all cases
13 would involve complex legal issues. *Id.*

14
15 Plaintiff filed his complaint *pro se* and has demonstrated an adequate ability to articulate
16 his claims *pro se*. This case is not complex. Plaintiff claims that Defendants have denied him
17 appropriate medical care in violation of the Eighth Amendment and that they have discriminated
18 against him in violation of the Americans With Disabilities Act. ECF No. 7 at 13.

19
20 Plaintiff states that he requires the appointment of counsel because he is indigent,
21 disabled, and has medical health problems which cause confusion and affect his ability to focus.
22 ECF No. 10 at 1. Based on the information submitted by Plaintiff, however, the Court is unable
23 to determine whether any such disabilities hinder Plaintiff’s ability to adequately articulate his
24 claims. If Plaintiff needs additional time to prosecute this matter, he should provide the Court
25 with documentation of his medical conditions so that the Court may make a determination as to
26 any additional time and/or assistance that may be required in this case.

1 The Court finds no exceptional circumstances in this case. While Plaintiff may not have
2 vast resources or legal training, he meets the threshold for a *pro se* litigant. Concerns regarding
3 investigation and discovery are also not exceptional factors, but are the type of difficulties
4 encountered by many *pro se* litigants. There are also numerous avenues of discovery available to
5 the parties through the Federal Rules of Civil Procedure during the litigation process. In
6 addition, Plaintiff has not shown a likelihood of success on the merits.
7

8 Accordingly, Plaintiff's motion for the appointment of counsel (ECF No. 10) is
9 **DENIED**. The Clerk is directed to send copies of this Order to Plaintiff.
10

11 **DATED** this 2nd day of May, 2013.

12
13 
14 Karen L. Strombom
15 United States Magistrate Judge
16
17
18
19
20
21
22
23
24
25
26